IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 516 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VIMALBEN ARJUNBHAI BHIKHABHAI CHUNARA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 516 of 2004

MS SUBHADRA G PATEL for Petitioner No. 1

RULE SERVED for Respondent No. 1-2

MS AC RAVAL, AGP for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 08/07/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenue has challenged her detention order dated 26-12-2003. By

the said order, the petitioner is detained as a "bootlegger" under P.A.S.A. Along with the order of detention, petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference about five criminal cases pending against the petitioner. All these cases are registered under Bombay Prohibition Act. After being satisfied subjectively, the detaining authority has passed order of detention against the petitioner, which is impugned in this petition.

2) Ms.Subhadra Patel, learned advocate for the petitioner submitted that the petitioner is a widow and only on the basis of pending criminal cases, the order of detention is passed against the petitioner and the authority has not recorded any statement of witnesses. She submitted that the cases registered against the petitioner can, at the most, be said to be the cases of breach of law and order and not of public order. She further submitted that there is a delay in forwarding as well as deciding the representation of the petitioner. It is submitted by her that the petitioner has made a representation through her advocate, which was received by the detaining authority on 12th January, 2004. In support of her say, she has placed on record an acknowledgment receipt, containing stamp and signature of the concerned clerk of the office of Commission of Police, Ahmedabad City, wherein date of receipt is mentioned as 12th January, 2004. According to her, the detenue was informed about the decision, taken on such representation, on 22nd January, 2004, by which the State Government has rejected the representation of the petitioner. It is submitted by her that therefore, there is a delay in deciding the representation of the petitioner.

3) To substantiate her say, the learned advocate for the petitioner has relied upon an unreported decision of this Court (Coram : A.L. Dave, J.) in Mulshankar Kalyanbhai Jani v. State of Gujarat, rendered in Special Civil Application No.9664 of 1999, on 16.3.2000, wherein on the ground of unexplained delay in despatching the representation, this Court as set aside the detention order. In paragraph 6 of the decision, this Court has observed as under :-

" ... ...

6. Having regard to the rival side contentions, the first factor that catches attention is the delay caused in forwarding the representation by

> the detaining authority. Admittedly, the representation made on behalf of the detenu was received on 16.11.1999. The detention was approved on 12.11.1999 and, therefore, the detaining authority was only expected to forward the representation to the State Government. The representation is forwarded on18.11.1999. The detaining authority has not explained as at what point of time, the representation was received on 16.11.1999 and how ti was dealt with on 17.11.1999 and, therefore, taking a liberal view that the representation may have been received on 16.11.1999 by evening, then also, the time consumed in forwarded till 18.11.1999 remains unexplained, i.e. there is no explanation coming forward as to what was done in respect of the representation on 17.11.1999. For this one day, probably, the representation remained unattended. This inaction and want of attention to the representation can be considered as sufficient to have infringed the right of the detenu of making an effective representation.
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> ... ..."

4) Ms.Archana Raval, learned AGP, submitted that the representation was received by the detaining authority on 13th January, 2003 and the same was forwarded to the concerned branch on 15th January, 2004 and the concerned branch has forwarded the same to the State Government on 17th January, 2004. She submitted that there is a delay of one day only, in forwarding the representation to the State Government. However, there is no explanation as to why the representation was not forwarded on the same day therefore, the delay in deciding representation of the petitioner has remained unexplained. Apart from that even as per the acknowledgment receipt, the representation was received by the Commissioner Office on 12th January, 2004. Under these circumstances, since the representation is not immediately dispatched by the detaining authority to the State Government, this petition is required to be allowed and it is allowed, as it is a settled position that the representation is required to be dealt with promptly.

5) For the foregoing reasons, this petition is allowed. The order of detention dated 26-12-2003 is quashed and set aside. The detenue, Vimlaben W/o. Arjunbhai Bhikhabhai Chunara is ordered to be set at liberty forthwith, if she is not required in connection

with any other case. Rule is made absolute.

(P.B.Majmudar,J.)
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